

**TOWN OF ELSMERE
BOARD OF ADJUSTMENT
MEETING MINUTES**

August 25, 2020

6:30 P.M.

PLEDGE OF ALLEGIANCE:

CALL TO ORDER:

ROLL CALL:

CHAIRMAN	JAMES PERSONTI	ABSENT
BOARD MEMBER	JOHN ACTON	ABSENT
BOARD MEMBER	PATRICIA BOYD	PRESENT
BOARD MEMBER	RON RUSSO	PRESENT
BOARD MEMBER	JOHN SMITH	PRESENT

Code Enforcement Officer, Scott Allen – Present

Code Enforcement Officer, Nicole Nabb – Present

PUBLIC COMMENT: None

APPROVAL OF MINUTES:

Minutes from the July 28, 2020 Board of Adjustment Meeting

ACTION: Board Member Boyd made a motion to approve the Minutes from the July 28, 2020 Board of Adjustment meeting with no corrections. The motion was seconded by Board Member Smith.

VOTE: 4 in favor, 1 abstained Motion carried

OLD BUSINESS: None

OPENING STATEMENT:

Administrative Assistant for the Code Department Denise Lardani read the opening statement.

NEW BUSINESS:

Review Petition 20-15 Tax Parcel # 19-00500-105

Mrs. Chick provided an opening statement. In her statement, she stated that based off her opinion chapter 225, Section 19 E of the Code of the Town of Elsmere states that a Building, Accessory Building or Dwellings trim shall consist primarily of embellishments in strip form, generally made of wood or other structural material, which are used to decorate or finish a surface, such as around doors or windows. If there is no molding used on a structure, trim could be considered a door, shutters or other embellished feature. For this trim, a color shall be selected that is a corresponding lighter/darker shade found on the same color card as the base colors provided. Mrs. Chick stated that the brick is an embellishment and less than Twenty Five percent. She also stated that "Grasshopper Green" is an approved color in the Town of Elsmere color pallet. She feels they are following the rules that were provided to them and this is freedom of their expression to make the business stand out. The specific color is their Logo/corporate color and is the same color as her first store that is in downtown Dover, Delaware.

Mr. Chick spoke about buying a building that was not in good condition and that they invested money in it and are fixing it up to make it look much better and bring in new business. This is their second business. He was surprised that there was any negative feedback about the color. He receives positive feedback and nothing but compliments on the color at his Dover store which is his corporate color. He wishes the Town to provide a waiver on the color that is a beautiful green color.

Code Officer Allen testified that he responded to the property and observed the paint did not appear to be in the Town of Elsmere paint pallet. Code Officer Allen obtained photos and issued a citation. In issuing the citation, Mr. Allen tried to explain to Mrs. Chick what he was doing, and he posted it on the front door. A short while later Mrs. Chick came to town hall and inquired about the adopted paint pallet of the town. Code Officer Allen explained to her and gave her some examples and allowed Mrs. Chick to take pictures of the color pallets. Mrs. Chick argued that she believed it was within the color pallet. Code Officer Allen disagreed and informed Mrs. Chick to Appeal to the Board of Adjustment.

Town Manager Giles asked Code Officer Allen "did you have the color swatch with you when you went to speak to the Appellant", Officer Allen's response was yes. Town Manager Giles asked "is the color of the building in your opinion a color that is prohibited with the Town of Elsmere's color pallet?" Officer Allen's response is yes. Town Manager Giles asked "is there any doubt in your mind," Officer Allen responded no sir. Town Manager Giles asked "do you currently have the color pallet in your code office" to which Code Officer Allen responded yes and I have reviewed the colors.

Town Manager Giles asked Officer Allen if he knew of anywhere in the code that states trim color can be twenty five percent. Code Officer Allen stated that he read the color section of our zoning code and did not see anything. Town Manager Giles asked "did the appellant approach the Code office prior to painting the building?" Code officer Allen responded no she did not.

The Board of Adjustment allowed Mrs. Chick to enter into evidence part of the paperwork that was supplied to her by Code Officer Allen when she came to Town Hall for information for the color pallet. It will be labelled 20-15N.

Town Manager Giles read the paper that was supplied by Mrs. Chick as exhibit 20-15N and it states that the accent color shall not compromise 25% of the identified trim and asked the appellant if she was referring the color to be as trim and her response was no the 25% of the whole building. Town Manager stated "the paper you provided into evidence clearly states that the accent color may not compromise more than twenty five percent of the identified trim color of the subject building."

Commissioner Boyd stated that the provided paper from Mrs. Chick, exhibit 20-15N identifies clearly what trim is and it is not considered the whole front wall of your exterior building as trim.

Commissioner Russo asked how the colors are designated outside of personal comparison. That there is an objective measurement of color.

Town Manager Giles stated that yes, we had a resolution passed that determined Sherman Williams color pallet that is adopted as the official color pallet for the Town of Elsmere. Every swatch in that Sherman Williams color pallet has a name and number associated to its color.

Chairman Personti questioned if the citation was due to the color of the building that it is a trim color and not an exterior building color. Only the trim could be colored in the bright green.

Town Manager Giles confirmed yes that is correct.

Commissioner Smith made a comment that he brought up the color of Grasshopper green on the Sherman Williams website and it appears to be a much darker green than the color that was painted on the appellants property. The commissioners and the Town Manager all agreed to this.

Mrs. Chick stated that the swatch for Grasshopper Green looks different than the building and that's why she feels Code Officer Allen gave her the citation. She also wanted to speak about the trim and embellished feature on the paperwork is not clearly defined. She argues the Green painted part of the building is an embellished feature and does not exceed twenty five percent of the building. She feels she did her best due diligence in researching Grasshopper green paint color and that it is an approved color of the Town of Elsmere color pallet. She feels it is a great color and something that is not worth escalating. She said that they are two young people trying to run a nice business. She argues that if she must repaint it, she will still be painting the same color on her building it will just be on the trim. She feels the letter of the law on this ordinance does not specifically say that what she is doing is wrong and it is open to interpretation as to what trim is.

Mr. Chick stated that the color is one hundred percent an accent color but on top of that, in his opinion it is a beautiful color. It's a nice addition to Elsmere and they want to bring a nice business to Elsmere. He asks for the Board to please work with them on this.

Town Manager Giles stated that Mrs. Chick said she performed her due diligence with the color of the building but did not come to town hall before she painted it, only after she received a violation. The building is three different colors and the code states it should be one base color and one trim color. Our code defines what trim is clearly and that it is not concrete blocks or brick.

Councilwoman Sally Jensen, 2nd District, has received five complaints from the second district and other districts about the color of 510 Kirkwood Hwy. and she has had several conversations with residents that the color used does not meet the Town of Elsmere's color pallet. She has received one compliment of the color. She inquired as to how many colors is the building permitted to be because as she can see it is multiple colors. It is Neon Green, Black and White windows on the front, Grey and Black on the sides, and if she is not mistaken it is white in the back of the building. Many residents of the town (as well as her) do not feel this falls within the color pallet of the town.

ACTION: A motion was made by Board Member Smith to deny petition 20-15. The motion was seconded by Board Member Russo.

VOTE: All in favor Motion carried

ITEMS SUBMITTED BY CHAIRMAN AND BOARD MEMBERS:

None

PUBLIC COMMENT:

None

ADJOURNMENT:

ACTION: A motion was made by Commissioner Smith to adjourn. The motion was seconded by Board Member Russo.

VOTE: All in favor Motion carried

Votes are recorded accurately. The audio tape(s) of this meeting will be available at Town Hall for a period of two years from the date these minutes are approved. The audio tape(s) may be reviewed at Town Hall by appointment and in accordance with the Freedom of Information Act.



JAMES PERSONTI, CHAIRMAN



PATTY BOYD, SECRETARY